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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 दिसम्बर, 2005

आ. अ. 9. — जबकि निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा-विनिर्दिष्ट दिसम्बर 2003 में दिल्ली राष्ट्रीय राजधानी राज्य-क्षेत्र से हुए विधान सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) में तदनुसूची विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, के स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विनिर्दिष्ट बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और जबकि, उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है तथा निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए एतद्वारा निरहित घोषित करता है;

सारणी

क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
1	2	3	4	5
1.	दिल्ली राष्ट्रीय राजधानी क्षेत्र के विधान सभा 2003 के लिए साधारण निर्वाचन	16-मादीपुर (अ.जा.) विधान सभा निर्वाचन क्षेत्र	श्री कुशल चन्द, डी-102-103, मादीपुर कालोनी, नई दिल्ली।	निर्वाचना व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—यथा—	27-हस्तसाल	श्री विनोद कुमार, ए-84, बिन्दापुर, पाकेट-4, उत्तम नगर, नई दिल्ली।	—यथा—
3.	—यथा—	30-पालम	श्री गोविन्द सिंह नेगी, मकान नं. आर, जेड-403ए, राज नगर-II, पालम कालोनी, नई दिल्ली-110045	निर्वाचन व्ययों का कोई भी लेखा विधि के अनुसार दाखिल करने में असफल रहे।
4.	—यथा—	38-पटपडगंज (अ.जा.)	श्री जितेन्द्र कुमार, डी-101, कॉडली, दिल्ली।	—यथा—
5.	—यथा—	41-गांधी नगर	श्री राम प्रताप यादव, 2250, कैलाश नगर, दिल्ली-110031	—यथा—
6.	—यथा—	—यथा—	श्री रमेश कुमार (लाला), 331/7ए गली नं. 2, राजगढ़ कालोनी, गांधी नगर, दिल्ली-110031	
7.	—यथा—	41-गांधी नगर	श्री घनश्याम कश्यप, X/3339, गली नं. 1, रघुबरपुरा नं. 2, गांधी नगर, दिल्ली-110031	—यथा—
8.	—यथा—	—यथा—	श्री अश्विनी कुमार, 9/6442, मुकजी गली, गांधी नगर, दिल्ली-110031	—यथा—

[सं. 76/दिल्ली-वि.स./2003(2)]

आदेश से

के. अजय कुमार, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th December, 2005

O.N. 9. — Whereas, the Election Commission of India is satisfied that the contesting candidates specified in column (4) of the table below at the General Election to the Legislative Assembly held from National Capital Territory of Delhi in December, 2003 as specified in column (2) and held from constituencies correspondingly specified in column (3) against their names have failed to lodge account of their election expenses, as shown in column (5) of the table, as required by the Representation of the People Act, 1951, and to Rules made thereunder.

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	Particular of Election	No. and Name of Assembly Constituency	Name and Address of Contesting Candidate	Reason for Disqualification
1	2	3	4	5
1.	General Election to the Legislative Assembly of NCT of Delhi-2003	16-Madipur (SC)	Kushal Chand, D-102-103, Madipur Colony, New Delhi.	Failure to lodge account of election expenses.
2.	-do-	27-Hastsal	Vinod Kumar, A-84, Bindapur Pkt-4, Uttam Nagar, New Delhi.	-do-
3.	-do-	30-Palam	Govind Singh Negi, H. No. RZ-403, A, Raj Nagar-II, Palam Colony, New Delhi-110045.	Failure to lodge account of election expenses not in manner required by law.
4.	-do-	38-Patparganj (SC)	Jitender Kumar,, D-101, Kondli, Delhi.	Failure to lodge account of election expenses.
5.	-do-	41-Gandhi Nagar	Ram Pratap Yadav, 2250, Kailash Nagar, Delhi-110031.	-do-
6.	-do-	-do-	Rakesh Kumar (Lala), 331/7A, Gali No. 2, Rajgarh Colony, Gandhi Nagar, Delhi-110031.	-do-
7.	-do-	-do-	Ghanshyam Kashyap, X/3339, Gali No. 1, Raghubarpura No. 2, Gandhi Nagar, Delhi-110031.	-do-

1	2	3	4	5
8.	General Election to the Legislative Assembly of NCT of Delhi-2003	41-Gandhi Nagar	Ashwani Kumar, 9/6442, Mukerji Street, Gandhi Nagar, Delhi-110031.	Failure to lodge account of election expenses.

[No. 76/DL-LA/2003(2)]

By Order,

K. AJAY KUMAR, Secy.

आदेश

नई दिल्ली, 9 जनवरी, 2006

आ. अ. 10. — यतः निर्वाचन आयोग का समाधान हो गया है कि लोकसभा 2004 का उप निर्वाचन, 2004 जो स्तम्भ (2) में विनिर्दिष्ट निर्वाचन क्षेत्र में हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व, अधिनियम 1951 तथा तद्विनिर्दिष्ट बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथादर्शित अपने निर्वाचन व्ययों का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में असफल रहा है;

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिये गये अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है;

सारणी

क्रम सं.	संसदीय निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4
1.	1-बीदर (अ.जा.)	श्री गनपतराव काम्बले, म.नं. 1-7180 इन्दिरा नगर स्टेशन एरिया, गुलबर्गा जिला गुलबर्गा-585102 कर्नाटक	विधि द्वारा अपेक्षित रीति से लेखा दाखिल नहीं किया।
2.	वही	श्री जयनंद राव एकाम्बेकर नावदगेरी, म.नं. 85, बीदर कर्नाटक	वही

[सं. 76/कर्ना.- लो. स./2005(उप)]

आदेश से,

तपस कुमार, सचिव

ORDER

New Delhi, the 9th January, 2006

O.N. 10. — Whereas, the Election Commission of India is satisfied that is of the contesting candidates specified in column (3) of the table below at the Bye-Election to the House of the People, 2004 held from the Constituency specified in the column (2) against his/her name has failed to lodge an account of his/her election expenses and failed to lodge the account in the manner required by law as mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder.

And whereas, the said candidates have either not furnished any reason or explanation for the said failures even after due notice to each of them or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now., therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	No. & Name of Parliamentary Constituency	Name & Address of the contesting candidate	Reason for disqualification
1	2	3	4
1.	I-Bidar(SC)	Sh. Ganapathrao Kamble, House No. 1-7180 Indira Nagar Station Area, Gulbarga Distt. Gulbarga-585 102, Karnataka.	Account not lodged in the manner required by Law.
2.	-do-	Sh. Jayanadrao Ekambaker, Navadgeri, House No. 85, Bidar, Karnataka.	-do-

[No. 76/KT-HP/2005(Bye)]

By Order,

TAPAS KUMAR, Secy.

आदेश

नई दिल्ली, 9 जनवरी, 2006

आ. अ. 11. — यतः निर्वाचन आयोग का समाधान हो गया है कि लोकसभा साधारण निर्वाचन, 2004 जो स्तम्भ (2) में विनिर्दिष्ट कर्नाटक राज्य के निर्वाचन क्षेत्र में हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम 1951 तथा तद्विन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथादर्शित अपने निर्वाचन व्ययों का कोई लेखा दाखिल करने में अथवा विधि द्वारा अपेक्षित रीति से लेखा दाखिल करने में असफल रहा है;

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिये गये अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए एतद्द्वारा निरहित घोषित करता है;

सारणी

क्रम सं.	संसदीय निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
1	2	3	4
1.	10-कोलार (अ.जा.)	श्री एम रवि कुमार, हरोहल्ली पी.सी. एक्टेन्शन के पास, कोलार शहर, कर्नाटक।	लेखा दाखिल नहीं किया।
2.	—वही—	श्री श्रीनिवास, हरोहल्ली पी.सी. एक्टेन्शन के पास, कोलार शहर, कर्नाटक।	—वही—

[सं. 76/कर्ना.- लो. स./2005]

आदेश से,

तपस कुमार, सचिव

SG GE/06-2

ORDER

New Delhi, the 9th January, 2006

O.N. 11. — Whereas, the Election Commission of India is satisfied that each of the contesting candidates specified in Column (3) of the Table below at the General Election to the House of People, 2004 held from the Constituency of Karnataka state as specified in the column (2) against his/her name has failed to lodge an account of his/her election expenses and failed to lodge the account in the manner required by law as mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder.

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice to each of them or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure.;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	No. & Name of Parliamentary Constituency	Name & Address of the contesting candidate	Reason for disqualification
1	2	3	4
1.	10-Kolar (SC)	Sh. M. Ravi Kumar, Harohalli, Near P.C. Extension, Kolar Town, Karnataka.	Account not lodged.
2	-do-	Sh. Srinivasa, Harohalli, Near P.C. Extension, Kolar Town, Karnataka.	-do-

[No. 76/KT-HP/2005]

By Order,

TAPAS KUMAR, Secy.

आदेश

नई दिल्ली, 9 जनवरी, 2006

आ. अ. 12. — यतः निर्वाचन आयोग का समाधान हो गया है कि कर्नाटक विधानसभा का उप निर्वाचन, 2005 जो स्तम्भ (2) में विनिर्दिष्ट निर्वाचन क्षेत्र में हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व, अधिनियम 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथादर्शित अपने निर्वाचन व्ययों का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में असफल रहा है;

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिये गये अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसार में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है;

सारणी

क्रम सं.	विधान सभा निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4
1.	81-चामराजपेट	श्री इशतार अहमद, सं. 10/ए, नोहा स्ट्रीट, शिवाजीनगर बेंगलोर-1, कर्नाटक।	लेखा दाखिल नहीं किया।
2.	81-चामराजपेट	श्री वी. के. प्रवीण, सं. 34/1, अम्माचाम्मा गार्डन, चौथा कास, लालबाग, बेंगलोर-27, कर्नाटक।	लेखा दाखिल नहीं किया।
3.	81-चामराजपेट	श्री डी महादेव, सं. 59/98 पांचवीं मेन रोड, आठवीं क्रॉस चामराजपेट, बेंगलोर-18, कर्नाटक।	लेखा दाखिल नहीं किया।
4.	81-चामराजपेट	श्री आर. मूर्ति, सं. 111, छठीं क्रॉस, दूसरी मेन रोड, विनायक नगर, बेंगलोर-30, कर्नाटक।	लेखा दाखिल नहीं किया।

[सं. 76/कर्ना.- वि. स./2005(उप)]

आदेश से,

तपस कुमार, सचिव

ORDER

New Delhi, the 9th January, 2006

O.N. 12. — Whereas, the Election Commission of India is satisfied that each of the contesting candidates specified in Column (3) of the Table below at the Bye-Election to the Kamataka Legislative Assembly, 2005 held from the Constituency specified in the column (2) against his/her name has failed to lodge an account of his/her election expenses and failed to lodge the account in the manner required by law as mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder.

And whereas, the said candidates have either not furnished any reason or explanation for the said failures even after due notice to each of them or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure.;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	No. & Name of Assembly Constituency	Name & Address of the contesting candidate	Reason for disqualification
1	2	3	4
1.	81-Chamarajapet	Sh. Ishtaq Ahamed, No. 10/A, Noha Street, Shivajinagar, Bangalore-1, Karnataka.	Account not lodged.
2.	81-Chamarajapet	Sh. V.K. Praveen, No. 34/1, Ammachamma Garden, 4th Cross, Lalbagh, Bangalore-27, Karnataka.	Account not lodged.
3	81-Chamarajapet	Sh. D. Mahadev, No. 59/98, 5th Main Road, 8th Cross, Chamarajapet, Bangalore-18, Karnataka.	Account not lodged.
4.	81-Chamarajapet	Sh. R. Murthy, No. 111, 6th Cross, 2nd Main Road, Vinayakanager, Bangalore-30, Karnataka.	Account not lodged.

[No. 76/KT-LA/2005(Bye)]

By Order,

TAPAS KUMAR, Secy.

आदेश

नई दिल्ली, 9 जनवरी, 2006

आ. अ. 13. — यतः भारत निर्वाचन आयोग का समाधान हो गया है कि 95-खरिआर विधान सभा निर्वाचन क्षेत्र से विधान सभा निर्वाचन, 2004 के लिए निर्वाचित श्री सुरेन्द्र कुमार तन्दिया, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्ती बनाए गए नियमों के द्वारा, विधि द्वारा यथा अपेक्षित रीति से निर्वाचन व्यापों का लेखा दाखिल करने में असफल रहे हैं;

और यतः श्री सुरेन्द्र कुमार तन्दिया ने जिला निर्वाचन अधिकारी, नुआपाडा के समक्ष 1 फरवरी, 2005 को दिन प्रति दिन व्ययों का केवल एक शपथ-पत्र ही प्रस्तुत किया है;

और यतः, श्री सुरेन्द्र कुमार तन्दिया को आयोग के दिनांक 13 मई, 2005 के पत्र सं. उड़ीसा-वि.स./95/2004 के द्वारा नुटियों को सुधारने का एक अवसर दिया गया था;

और यतः, श्री सुरेन्द्र कुमार तन्दिया ने आयोग द्वारा सम्यक् सूचना और अवसर दिए जाने पर भी उक्त असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है;

और यतः, निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में श्री सुरेन्द्र कुमार तन्दिया को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा या विधान परिषद् के सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं. 76/उड़ीसा-वि.स./2004(7)]

आदेश से,

आर. के. श्रीवास्तव, सचिव

ORDER

New Delhi, the 9th January, 2006

O.N. 13. — Whereas, Shri Surendra Kumar Tandia a contesting candidate at the election to the Orissa Legislative Assembly, 2004 held from 95-Khariar Assembly Constituency in the State of Orissa has failed to lodge his

accounts of election expenses in the manner required by law, as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, Shri Surendra Kumar Tandia has submitted only an affidavit on day to day expenditure before the District Election Officer, Nuapada on 1st February, July, 2005;

And Whereas, Shri Surendra Kumar Tandia was given an opportunity by the Commission vide Commission's letter No. OR-LA/95/2004 dated the 13th May, 2005 to rectify the defects;

And whereas, Shri Surendra Kumar Tandia has not furnished any reason or explanation for the said failure even after due notice and opportunity given to him by the Election Commission;

And whereas, the Election Commission is satisfied that the said candidate has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares Shri Surendra Kumar Tandia to be disqualified for being chosen as and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of 3 years from the date of this order.

[No. 76/OR-LA/2004 (7)]

By Order,

R. K. SRIVASTAVA, Secy.

नई दिल्ली, 13 जनवरी, 2006

आ. अ. 14. — लोकप्रतिनिधित्व अधिनियम 1951, (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2004 की निर्वाचन अर्जी संख्या 14 में, कर्नाटक उच्च न्यायालय, बंगलौर का निर्णय तारीख 3-3-2005 को इसके द्वारा यहाँ प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाषा में छपा है।)

[सं. 82/कर्नाटक-लो.स./ (14/2004)/2005]

आदेश से,

तपस कुमार, सचिव

New Delhi, the 13th January, 2006

O.N. 14. — In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission hereby publishes the order of the High Court of Karnataka, Bangalore, dated 3-3-2005 in Election Petition No. 14 of 2004.

56 GL/06-2

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 3rd Day of March, 2005

BEFORE

THE HON'BLE MR. JUSTICE N. KUMAR

ELECTION PETITION No. 14 OF 2004

Between:

Sri Raja Madan Gopala Nayak
S/o Late Sri Raja Venkatappa Nayak
Aged about 53 years
R/at Near Sharada Printing Press
Gopal Swamy Temple Road
Shorapur
Tq. Shorapur-585224
District Gulbarga

.....Petitioner

(By Sri G.S. Visweswara, Senior Counsel for Sri Aravind Kumar, Advocate)

AND:

1. Sri Venkatesh Naik
S/o Balwantharaya
Aged about 66 years
5/34, Arkere Post
Taluk Dev Durga
District Raichur

2. Sri Kallur Suresh Reddy
S/o Bojana Gowda
Aged 53 years
H.No. 2-1-26, Androon Khilla
Raichur

3. Sri B. Basalingappa
S/o Basappa
Aged 28 years
C.P.I (ML) Red Flag
12/11/32, Arab Mohalla Circle
Raichur

.....Respondents

(By Sri B.C. Muddappa and Sharanappa Mattur, Advocate for RI;
Respondent-2 dead;
Respondent-3 served;)

This Election Petition filed under Section 81 of R.P. Act, 1951, praying to declare that the declaration of election of 1st respondent as contained in Annexure-A declaring the 1st respondent as duly elected from 3-Raichur parliamentary constituency as null and void as per Section 100 (d) (iii) and (iv) of R.P. Act, 1951 as null and void, etc.

This Election Petition coming on for orders this day, the Court made the following:

ORDER

The petitioner, an unsuccessful candidate, has challenged in this Election Petition the election of the first respondent, the Returned Candidate, to No. 3 Raichur Parliamentary Constituency in the elections held to the Parliament in April, 2004.

2. The election to the 14th Lok Sabha was held on 20-04-2004. The calendar of events for the election was published on 24-03-2004 as per Annexure-A. 31-03-2004 was the last date for filing the nomination papers. The date fixed for scrutiny of the nomination papers was 02-04-2004. Repolling was ordered on the ground of failure of electronic voting machines on 22-04-2004 in four polling stations namely 119, 104, 17 and 51 at Kasaba Lingasagur, GHPS Khanpur, Haranagara and Dharshanapur, respectively.

3. The petitioner contested on Janatha Dal (Secular) party ticket. The first respondent contested from Indian National Congress, 2nd respondent contested from Bharathiya Janata Party ticket and the third respondent contested as independent, to No. 3 Raichur Parliamentary Constituency (for short hereinafter referred to "Raichur Constituency") comprising of eight assembly segments and they are No. 17-Yadgir, 18-Shahapur, 19-Shorapur, 20-Deodurga, 21-Raichur, 22-Kalmala, 23-Manvi and 24-Lingsagur.

4. In pursuance of the calendar of events elections were held to Raichur Constituency. The counting of votes polled took place at L.V.D. College on 13.05-2004. The result of the election was declared on 13-05-2004. The first respondent was declared duly elected as per Form No. 21-C, Annexure-D by margin of 508 votes. Before announcement of the results the petitioner demanded recounting of votes as per Annexure-N, which was rejected as per Annexure-P. Aggrieved by the same, the petitioner has preferred this Election Petition.

5. Broadly, the petitioner challenges this election on three grounds. First ground is regarding illegality committed in counting of postal ballots. In paragraph 9 of the Election Petition it is stated that the petitioner and his election agents were very much present at the counting venue at the time specified for counting. The postal ballot papers had to be taken first for counting. The candidate and his election agents were supervising the seating arrangements of their agents in the assembly segments. The Returning Officer (for short hereinafter referred to as 'R.O.') without announcing that the actual counting of postal ballot papers would start had commenced the counting of postal ballot. There were 1017 ballot papers and 653 ballot papers were rejected without assigning proper reasons. The rejection of postal ballot papers were improper and wrongful. This 653 wrongful rejection of ballot papers has materially affected the results of election. If these votes are properly accepted and taken into account, it would come to the petitioner and votes that had come to

the petitioner are wrongfully rejected. In paragraph 10 of the petition it is stated that the R.O. has not assigned the reasons as required under Rule 54-A of the Conduct of Election Rules, 1961, (for short hereinafter referred to as the 'Rules'). Out of 364 votes taken into consideration for counting under postal ballots, 128 votes have been polled in favour of the petitioner, i.e., 35%. If the 4th respondent had opened and counted the postal ballots in accordance with Rule 54-A of the Rules, the petitioner would have secured at least 40% i.e., about 260 votes from out of the rejected votes. Non-counting of the postal ballots numbering 653 votes has resulted in materially affecting the result of the election.

6. The second ground urged is, improper allocation of votes in Form No. 20. It is alleged that the final result sheet was compiled by the Assistant Returning Officer, (for short hereinafter referred to as 'ARO') of parliamentary constituency who is also the R.O. of Yadgir Assembly Constituency. While doing so, there has been improper allocation of votes to the candidates than what they have secured. As per Annexure-F the petitioner has secured 117 votes and respondents-1 to 3 have secured 244, 66 and 25 votes respectively. However, while entering the Final Result Sheet in Form-20 the A.R.O. has not entered the votes according to Form No. 17-C supplied/forwarded by the counting supervisor. The final result sheet Form No. 20 i.e., certified true copy pertaining to Raichur Constituency in respect of 17-Yadgir Assembly segment as per Annexure-G shows that the votes allotted to the petitioner is 15 and respondents 1 to 3 are 147, 178 and 6 votes respectively. According to the Voter-Turnout report the total voters turned out for polling was 452 as rightly entered in Form No. 17-C and not 346 as entered in Form No. 20. Thus, there has been violation of Rule 56-C which has materially affected the petitioner being declared as duly elected.

7. The third ground on which the election assailed is regarding glaring discrepancies in the figures mentioned in the voters turn out report when compared to Form 20, the result sheet. In respect of this ground it is alleged that on comparing with the voters turn out report of the Raichur Constituency in respect of all the eight assembly segments which are produced as Annexure-C to C-6, Annexures-H to H-102 with Form 20 produced as Annexure-J, J-1 to J-7, the A.R.O. have erroneously entered the total number of valid votes, in as much as, the actual voter turn out report submitted by the A.R.O.'s is contrary to one entered in Form 17-C and Form 20. In Fact, in the petition, in a tabular column the Polling Station numbers, name of the Polling Station, voter turn out as per voter turn out report showing the number of men and women who voted in the election and the figures found in Form 17-C as well as the figures found in Form 20 and for each assembly segment, the particulars of discrepancies found have been tabulated. Relying on the said discrepancies, the petitioner

contends that there has been large scale violation of Rule 56-C and the same has resulted in materially affecting the final result and also materially affected the petitioner from being duly elected to Raichur Constituency. It is asserted that the counting supervisors and the A.R.O have not complied with the provision of Representation of People Act (for short, hereinafter referred to as the 'Act'), Rules and also the order and directions issued by the Election Commission of India in exercise of power under Article 324 of the Constitution of India, resulting in non-compliance of the same.

8. It is contended by the petitioner that, when the results were declared the petitioner was handicapped with non-availability of the minute details as narrated in the election petition, though *prima facie* he was satisfied that large scale variation of votes during the counting had been taken place. The petitioner's representation seeking for recounting has been rejected by the 5th respondent and therefore, the petitioner has approached this Court for a declaration that the election of the first respondent declaring him as duly elected from Raichur Constituency is null and void as per Section 100 (d) (iii) and (iv) of the Act. Further, it is prayed that the petitioner be declared as duly elected in the aforesaid election or in the alternative for a direction for recounting of the votes including the postal ballots.

9. After service of notice the first respondent entered appearance through his Counsel. He has filed detailed written statement controverting all the allegations made in the election petition. However, on 03-02-2004 it was reported that the second respondent is dead. Though the third respondent has been duly served, he has remained absent.

10. In the written statement, the first respondent has clearly set out the procedure which is followed from the moment the voter enters the polling station till he comes out of the polling station. He contends neither the marked copy of the Electoral Roll nor Voters Turn Out Report prepared on the basis of the marked Electoral Roll reflect the actual casting of votes but it only reflect the number of voters turned to cast their vote. Voters Turn Out report and the Accounts of Votes Recorded relate to pre-counting stages. The petitioner by comparing the number recorded in Voters Turn Out Report, men and women wise, with that of the number of votes elicited during counting process by pressing the Result button and the entry made in the Results Form No. 20 has alleged that there is large scale violation in allocating the votes to each of the contesting candidates. This ground urged by the petitioner is misconceived and in fact the petitioner has made a misleading statement.

11. The respondents contend that the above election petition filed by the petitioner is incomplete and its presentation does not satisfy the requirement of Section 81 and 82 of the Act. The allegation of improper reception,

refusal or rejection of any vote and non-compliance of the provisions of the Act, Rules and certain provisions of the Constitution as the grounds urged for the relief sought is against the R.O. and the relief sought is based on the action or inaction of the said R. O. who could either rebut or justify the same. Thus the *lis* as could be seen from the pleadings is against the R.O. and in the absence of he being made a party, contentious issues raised cannot be determined. The R.O. has not been made party to the above election petition and therefore the petition is bad in law for non-joinder of necessary parties. As such, it is liable to be dismissed as contemplated under Section 86(1) of the Act.

12. It is further contended that the election petition is bereft of any merit. The petitioner has not made out any ground as to how the result of the election has been materially affected. The petitioner has not pleaded anywhere in the election petition that the rejected postal ballots numbering 653 were valid votes. The petitioner's assertion that there is certain increase or decrease in the votes recorded and allocated in the result sheet has not in any way affected the result of the election with which this respondent has been declared as elected. The petitioner's plea that the counting supervisor and the A.R.O. concerned have erroneously entered the total number of valid votes, is based on the entries made in the Voter Turnout Report which do not reflect the actual casting of votes by the voter and therefore this plea has no substance. The plea that there has been a large scale violation of Rule 56-C of the Rules and the counting supervisors—A.R.Os have not complied with the provisions of Act, the orders and directions issued thereunder is vague, ambiguous and uncertain. As a matter of fact, the respondents should have been declared as elected with 523 votes instead of 508 votes.

13. The petitioner and his counting agents were very much present at the counting venue much earlier to the time specified for counting. It is also true that the procedure requires that the postal ballots had to be taken first for counting. He has denied the allegation the R.O. without announcing the actual counting of the postal ballots papers commenced the counting of postal ballots and rejected 653 postal ballots without assigning proper reasons. The allegation that if these 653 postal ballots had been properly accepted and taken into account, a substantial portion of the said votes would have come to the petitioner, is wrong. The assertion of the petitioner is based on a fertile thinking and speculation and therefore it has no substance. The petitioner is a veteran of many elections and knows the requirements of postal ballots. The petitioner has not pleaded that the said rejected postal ballots are valid. No factual foundation is laid in the petition with material particulars of alleged error or mistake, if any, in rejecting the postal ballots. No objection whatsoever has been raised during the counting and no irregularity, if any, in rejecting the said postal ballots has been brought to the notice of the R.O. Even none of the other contesting

candidates other than the petitioner, who too have secured substantial votes have questioned the correctness of the rejection of 653 postal ballots. Even the application dated 13-05-2004 requesting for recounting do not contain that the said rejected postal ballots were/are valid and are in favour of the petitioner. The allegations in this regard are vague and the petition does not contain any adequate statement of the material facts. The petitioner has pleaded this ground with the object of having a fishing enquiry. The petitioner's request was rightly rejected and the same has not materially affected the result of the election. The petitioner has falsely alleged that the R.O. has not assigned any reasons for rejecting postal ballots as contemplated under Section 54(A) of the Rules. This plea of the petitioner is self contradictory, since the petitioner admits assigning reasons for rejection in paragraph 9 of the petition. The contention of the petitioner that he could have secured 260 votes out of the said postal ballots is a mere speculation. He has not raised any objection either during counting or soon thereafter when he had occasion to object and has not laid any factual foundation as to the irregularity or illegality if any in rejecting the said postal ballots. The rejection of the said postal ballots as invalid by the R.O. is for want of compliance of Rule 54-A. Summoning of the said rejected postal ballots for inspection is not a matter of right. Material facts on the basis of which the petitioner asserts that there is improper rejection of the said postal ballots are not pleaded in the petition. Infirmary in the said rejected postal ballots has also not been denied.

14. Annexure-F produced and relied by the petitioner at page 162 of the petition indicates that it relates to booth No. 71 of 17-Yadgir Assembly Segment and it shows that the petitioner has secured 117 votes and whereas the first respondent has secured 244 votes. Annexure H-11 produced and relied on by the petitioner in Form 17-C part-II relating to Polling Station No. 101 of 17 Yadgir Assembly Segment indicates that the petitioner has secured 127 votes and the total votes polled are 501. Annexure-J is the Final Result Sheet relating to 17-Yadgir Assembly Segment and at page 386 of the petition relating Polling Station No. 101 the votes allocated to the petitioner are 147 instead of 127 which are recorded in his favour and the total valid votes recorded is shown 521 instead of 501. Thus, there is excess allocation of 20 votes in favour of the petitioner. In view of this admitted pleading of the petitioner, this respondent should have been declared elected with 523 votes instead of 508 votes. Therefore, there is no substance in the contention of the petitioner.

15. The allegation in the petition that the petitioner was handicapped with non-availability of the minute details as to the large scale variation of votes during the counting is false and baseless. The petitioner was very well present through out the counting right from the beginning to end and was ably assisted by his trusted and experienced counting agents and knowing fully well he did

not object for the validity of the counting process. It appears that the petitioner has been tempted to present this petition on a baseless allegations looking to the meager margin with which the results of the election has been declared. This Election Petition filed by the petitioner stems from *malafide*. The grounds urged in support of the relief prayed *prima facie* are not in conformity with the Rules governing the polling and the counting process. Therefore, he has prayed for dismissal of the writ petition.

16. On the aforesaid pleadings, on 10-12-2004 the following issues have been framed :

(1) *Whether the petitioner proves that out of 1017 postal ballot papers 653 ballot papers were not counted at all and they have been rejected without assigning proper reasons as required under Rule 54-A of the conduct of Election Rules 1961 and thus it has materially affected the result of the petitioner ?*

(2) *Whether the petitioner proves that the counting of votes in respect of Polling Station Nos. 71 and 101 of 17-Yadgir Assembly Segment is in violation of Section 56-C of the Election Rules in as much as there is a discrepancy in the votes entered in Part-II of Form-17C and in Form-20 which has materially affected the election of the petitioner ?*

(3) *Whether the petitioner proves that because in Form No. 20 and 17-C Part-II less number of voters as shown to have voted than what is mentioned in the Voter Turn Out Report, it has materially affected the election of the petitioner ?*

(4) *Whether the Election Petition is bad for non-joinder of necessary parties in as much as not making the Returning Officer as party to the proceedings ?*

(5) *What order ?*

17. Parties filed the list of witnesses and have produced documents. The petitioner examined himself as P.W. 1, he examined G.N. Nayak the R.O. as P.W. -2, D.P. Chawan, the A.R.O. as P.W. -3 and Kashinath Gokhale the R.O. of No. 17, Yadgir Assembly Segment as P.W. -4. He has marked Exs. P-1 to P-31.

18. On behalf of respondents, first respondent examined himself as R.W. -1 and his election agent Parasmal Sukhani has been examined as R. W-2. He has marked documents at Ex. R-1 to Ex. R-6.

19. The first respondent had filed an application I.A. No. 1/05 seeking leave of the Court to produce documents and the same was allowed on 03-02-2005 subject to admissibility and proof. The petitioner filed I.A. 11/05 for

summoning the documents from the R.O. Subsequently, he filed a memo for not pressing the said application. Accordingly, it was rejected. Thereafter he filed I.A. No. III/05 for summoning the documents from the Deputy Commissioner, Raichur. The said application was opposed by the first respondent. The documents sought to be summoned were Voter Turn Out Report, i.e., Form No. 17-A pertaining to entire Parliamentary Constituency, Form 17-C pertaining to Polling Station 71 of 17-Yadgir Assembly Segment, Form 20 in respect of the entire Parliamentary Constituency and Form 17-A of the entire Parliamentary Constituency. As the petitioner has produced certified copies of these documents, they are not disputed by the first respondent and in the course of evidence they were all marked the Court felt that there was no necessity to summon the originals and therefore, the said request was rejected.

20. The petitioner has sought for summoning of all postal ballots received in respect of the Parliamentary Constituency. The said request was rejected on the ground that if those ballot papers had been summoned for the purpose of Court looking into the same to find out whether the R.O. was justified in rejecting the declaration form, virtually it amounts to ordering of recounting even before enquiry. Therefore, it was held that the said application is premature and after the entire enquiry if a case for summoning the said document is made out, the request of the petitioner would be considered. With the said observations the application was also rejected.

21. After the conclusion of the trial, the learned counsel appearing for the petitioner and the first respondent have submitted their arguments.

22. Sri. G.S. Vishweshwara, learned senior counsel appearing for the petitioner submitted as under :

23. The counting of postal ballot papers was contrary to Rule 54-A of the Rules and also the orders, directions issued and also as contained in the instructions given in the hand book for Returning Officers. Under the rules the postal ballot papers shall be dealt with by the R.O. first, before the R.O. deals with the other ballot papers. The postal ballot papers and other ballot papers cannot be simultaneously counted. In the instant case, there was simultaneous counting of postal ballots and other ballot papers which is contrary to the Rules, Guidelines and the orders. As such, the said illegality has materially affected the election results.

24. Secondly, he contended that the petitioner could not be present at the commencement of the counting of postal ballot papers because he was not duly informed. In his absence as against 1017 postal ballots papers, 653 postal ballots have been rejected as invalid. Having regard to the margin of votes with which the first respondent has returned in the election namely 508, this 653 votes which were rejected as invalid would materially affect the result of the returning candidate.

25. Thirdly he contended that the entries made in paragraph 11 of Form 17-C in respect of Polling Station 71 as evidenced by Ex.P-16 and P-17 clearly shows that there is discrepancies in the votes allotted to the petitioner and the respondent. Though in Form 17-C, the petitioner is shown to have secured 117 votes, while making corresponding entry in Ex.P-17, i.e., the result sheet, he is shown to have secured 15 votes, thus the petitioner has been denied 102 votes. The said wrong allocation of votes has materially affected the election.

26. In respect of Issue No.3 it was contended that in the election petition and in the affidavit filed in examination in chief as that of the petitioner, the particulars of the number of votes shown in the Voter Turnout Report, Form 17-C and Form 20 are mentioned. On bare comparison of the facts recorded in the Voter Turnout Report when compared with the votes recorded in Form 17-C and Form 20 shows that nearly 336 votes have not been taken into account at all. There is violation of the Rules, instructions contained in the hand book issued to the R.O. and orders of the Election Commission and therefore a case for setting aside of election is made out under Section 100(b)(iv) of the Act. In support of their contention he has also relied on several judgments.

27. Lastly, it was contended that as is clear from Section 82 of the Act, which clearly defines who should be the parties in an election petition, the contention of respondent that non-joinder of R.O. renders the petition bad for non-joinder of necessary parties is without any basis. Therefore, he submits that petition is maintainable.

28. Per contra, the learned counsel for the respondent Sri. Muddappa contended that a reading of the entire election petition shows that the grievance of the petitioner is not against the first respondent but is against the R.O., A.R.O and the Counting Supervisors. The R.O. is a necessary party to the proceedings and he being not made a party, the petition is liable to be dismissed on the ground of non-joinder of necessary parties.

29. He submits that law mandates that the postal ballot papers have to be counted first. It is because, unlike other votes, even after the polling date the R.O. receives the postal ballots. Therefore, the law prescribes a dead line, i.e., all postal ballots received till the commencement of the counting have to be taken into consideration and any votes received after the commencement of the voting are to be kept in a separate cover and rejected as invalid votes. That does not necessarily follow that other votes should not be counted along with the postal ballots or that other votes have to be counted only after completion of the postal ballots. The relevant rules and the Act do not indicate any such intention on the part of the legislation. Therefore, he submits that on that ground, the election cannot be set aside.

30. Further he submits that it is not the case pleaded by the petitioner. The plea as it stands, the grievance of the petitioner is that the R.O. without information had started counting of votes and therefore he was unable to be present and in his absence 653 votes have been wrongly rejected. In the election petition the petitioner has not given particulars such as the number of ballot, the name of the person who has sent the ballot, wrong reasons assigned by the R.O. for rejecting that ballot or the declaration form. In the absence of concise statement containing these material particulars, the plea is very vague and on that ground itself, the petition is liable to be rejected. Even otherwise, there is absolutely no evidence adduced before the Court to substantiate the charges of illegal rejection of the votes and nothing is demonstrated to show that the reasons given for rejecting the postal ballots is not in accordance with law. The evidence on record clearly demonstrates that at 8. A.M. on the counting day the R.O. started counting of postal ballots. Thus the mandatory requirement contained in Rule 54-A is complied.

31. In so far as the discrepancies found in Ex. P-16 and P-17 pertaining to Polling Station 71, it was contended that it is true that when the petitioner is shown to have secured 117 votes in Ex. P-16, in Ex. P-17 the result sheet, Form 20 an entry is made showing only 15 votes as against 117 votes secured by the petitioner, 102 votes is denied to the petitioner. He submits that Ex. P-16 in respect of the first respondent shows that 244 votes is secured by the first respondent whereas the votes entered in Ex. P-17 is only 147, thus, he also has been denied 97 votes and if there is any difference, it is only five votes which do not materially affect the election in any manner. In this context, he has pointed out that in respect of the Polling Station 101 the petitioner has secured only 127 votes as is clear from Part-II of Form 17-C, in the result sheet Form 20 he has been allocated 147 votes, thus 20 votes more than what he is legitimately entitled to. In fact that 20 votes are to be reduced from the votes secured by the petitioner, the margin of difference between the petitioner and the respondents would get increased. Thus, instead of 508 votes, he would have won the election by 528 votes.

32. In respect of Issue No.3, it is contended that the contention of the petitioner is based on the discrepancies between the Voter Turnout Report and the entries made in Part II of Form 17-C and 20. In the entire scheme, under the Act, Rules, guidelines the entries in Voter Turnout Report is not recognized. That is the report maintained in each polling station only to show the number of persons who entered the polling station and out of them how many are men and how many are women and in the end of the day statistics are taken for the purpose of informing the Election Commission, Press, the media and it has absolutely no relevance in so far as the votes secured by the candidates in the election is concerned. What is of

importance is the entry made in Part II of Form 17-C which is the entry made on the date of counting in the presence of counting agents of the parties after viewing the electronic voting machine where the total number of votes held and the number of votes held by each candidate is displayed and entered in Part II of Form 17-C. The said figures are carried over to Form 20 the Result Sheet on the basis of which the elections are announced. Admittedly, in this case, except for one Polling Station, There is absolutely no discrepancy between the entries found in Part II of Form 17-C and Form 20 and therefore the case sought to be made out by the petitioner is only imaginary and is without any substance.

33. It was also contended that when the petitioner made a request for recounting, he has not whispered anything about the illegality in respect of counting of postal ballots nor any discrepancy in the Voter Turnout Report and the entries made in Form 17-C. On the contrary, his grievance was having regard to the narrow margin of victory he wants the recounting done. Therefore, he submits that there is no substance in any of the contentions urged by the petitioner in this petition and it is liable to be rejected.

34. In order to appreciate these contentions and to answer issues No. 1 to 3, in particular it is necessary to have a look at the relevant provisions of the Act, Rules and the hand book for Returning Officers and the decisions on the point.

35. Section 83 of the Act deals with the pleadings in election petition. It states that, an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The said pleadings have to be signed in the manner prescribed under the Code of Civil Procedure.

36. Section 94 of the Act deals with secrecy of voting not be infringed. No witness or other person shall be required to state for whom he has voted at an election.

37. Section 100 deals with grounds for declaring elections to be void. Section 100(d) states, subject to the provisions of Sub-section (2) if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper acceptance of any nomination, or by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

38. In so far as counting of votes in respect of postal ballot papers is concerned, the procedure prescribed under law is stipulated under Rule 54A. The said provision mandates that the R.O. shall first deal with the postal ballot papers in the manner provided under the Rules. It provides that, no cover in Form 13-C received by the R.O. after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. The other covers shall be opened one after another and as each cover is opened, the R.O. shall first scrutinize the declaration in Form 13-A contained therein. If the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13-B, that cover shall not be opened, and after making an appropriate endorsement thereon, the R.O. shall reject the ballot paper therein contained. Each cover so endorsed and the declaration received with it shall be replaced in the cover in Form 13-C and all such covers in Form 13-C shall be kept in a separate packet which shall be sealed and on which shall be recorded the name of the constituency, the date of counting and a brief description of its content. The R.O. shall then place all the declarations in Form 13-A which he has found to be in order in a separate packet which shall be sealed before any cover in Form 13-B is opened and on which shall be recorded the particulars referred to in sub-rule (5). The covers in Form 13-B not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the R.O. shall scrutinize each ballot paper and decide the validity of the vote recorded thereon. A postal ballot paper shall be rejected (1) if it bears any mark other than the mark to record the vote or writing by which the elector can be identified; or (aa) if no... is recorded thereon; or (b) if votes are given on it in favour of more candidates than one or (c) if it is a spurious ballot paper; or (d) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or (e) if it is not returned in the cover sent along with it to the elector by the R.O. A vote recorded on a postal ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given. The R.O. shall count all the valid votes given by the postal ballot in favour of each candidate, record the total thereof in the result sheet in form 20 and announce the same. thereafter, all the valid ballot papers are kept in safe custody.

39. The Hand Book for Returning Officers published by the Election Commission of India contains instructions to the R.O. regarding the counting of votes received by post. Instruction 14.1 reiterates that the postal ballots are to be counted first. Instruction 14.2 makes it clear that covers in form 13C containing postal ballot papers received after the hour fixed for the commencement of counting of votes should not be opened. They should be

rejected and kept in a separate packet and sealed notifying thereon the appropriate particular. Instruction 14.3 instructs the R.O. how the counting of postal ballot is to be done. It states that the covers in Form 13-C received in time should be opened one after another. As each cover is opened, he should take out the declaration in form 13-A and the cover in form 13-B and Scrutinize the declaration. If the declaration in form 13-A is not found in the cover or the declaration has not been duly signed and or not attested by an officer competent to do so or is otherwise substantially defective or is the serial number of ballot paper appearing in the declaration is different from the serial number on the cover in form 13-B, the cover containing the postal ballot paper should not be opened, but the ballot paper should be rejected. Each such rejected cover should be endorsed suitably and the declaration and the cover should be placed in the cover in form 13-C. All such covers in form 13-C should be kept together in a separate packet duly sealed and full particulars such as the name of the constituency, the date of counting and a brief description of contents should be noted thereon for easy identification. All the declarations in Form 13-A which have been found to be in order, should then be kept in separate packet in order to ensure that the secrecy of the postal ballot is kept inviolate. The packet should then be sealed noting thereon the particulars regarding the name of the constituency, the date of counting and brief description of the contents. This should be done before the covers in form 13-B containing the ballot papers are opened.

40. Instruction 15 makes it very clear how the counting of votes received by post for parliamentary constituency is to be counted. It provides that, the ARO for the parliamentary constituency who will count the votes polled at a component Assembly Constituency, will have nothing to do with the votes received by post for the Parliamentary Constituency. According to Rule 65 of the Rules if ballot papers are counted at more places than one, the provisions of Rule 54A of the said Rules will apply only to counting at the last of such places. It is possible to regard the place at which the R.O. finally counts and declares the result as the last place of counting in point of time. In other words, the procedure prescribed for R.O. of a parliamentary constituency is to get Form 20 result sheet duly completed from the AROs, then take up the counting of postal ballot papers as provided in Rule 54A and then proceed under Rule 63 and 64 of the Rules. Instruction 17.1 provides that, when the R.O. is engaged in counting the votes received by post, the work of distribution of control units of voting machines on the various counting tables can be done.

41. Rule 63 of the Rules provide that, (1) after the completion of the counting, the R.O. shall record in the result sheet in Form 20 the total number of votes polled by each candidate and announce the same. (2) After such announcement has been made, a candidate or, in his

absence, his election agent or any of his counting agents may apply in writing to the R.O. to recount the votes either wholly or in part stating the grounds on which they demand such re-count. (3) On such an application being made the R.O. shall decide the matter and may allow the application in whole or in part or may reject it in to if it appears to him to be frivolous or unreasonable. (4) Every decision of the R.O. under sub-rule (3) shall be in writing and contain the reasons therefor. (5) If the R.O. decides under sub-rule (3) to allow a re-count of the votes either wholly or in part, the procedure prescribed therein has to be followed. No step under the sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2).

42. Dealing with these provisions the Supreme Court had an occasion to consider under what circumstances a recount could be ordered. What is the pleading required in such an Election Petition, what are the material particulars which have to be pleaded in the petition and what is evidence to be adduced in support of such pleadings and under what circumstances the Court can order for recounting. A constitution bench of the Supreme Court in the case of **RAM SEWAK YADAV VS. K. HUSSAIN KAMIL KIDWAL AND OTHERS** reported in **AIR 1964 SC 1249** has held:—

“6. An election petition must contain a concise statement of the material facts on which the petitioner relies in respect of his case. If such material facts are set out the Tribunal has undoubtedly the power to direct discovery and inspection of documents with which a civil court is invested under the Code of Civil Procedure when trying a suit. But the power which the civil Court may exercise in the trial of suits is confined to the narrow limits of O. 11 Code of Civil Procedure. Inspection of documents under O. 11 Code of Civil Procedure may be ordered under R. 15, of documents which are referred to in the pleadings or particulars as disclosed in the affidavit of documents of the other party, and under R. 18(2) of other documents in the possession of power of the other party.

The returning officer is not a party to an election petition and an order for production of the ballot papers cannot be made under O. 11 Code of Civil Procedure. But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interest of justice demanded it, the Tribunal may call upon the returning officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers : that power is clearly implicit in Ss. 100 (1)(d)(iii), 101, 102 and Rule 93 of the Conduct of Election Rules, 1961. This power to order inspection of the ballot papers which is apart from O. 11 Code of Civil Procedure may be exercised, subject to the statutory restrictions about the secrecy of the ballot paper prescribed by Ss. 94 and 128(1).

(7) An order for inspection may not be granted as a matter of course : having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled :

(i) That the petitioner for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) The Tribunal is *Prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary. But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.”

43. After referring to the various provisions of the Act and the Rules, the Supreme Court has further held that :—

“(9) There can therefore be no doubt that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning officer, inspecting any rejected votes, and to demand a re-count. Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened, and the votes were counted. He has also opportunity of inspecting rejected ballot papers, and of demanding a re-count. It is in the light of the provisions of S. 83 (1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting of watching and a claiming a re-count that the application for inspection must be considered.”

44. Reiterating the aforesaid legal position, the Supreme Court in the case of **DR. JAGJIT SINGH vs. GIANT KARTAR SINGH AND OTHERS** reported in **AIR 1966 SC 773** held :

“The scheme of the rules prescribed in Part V of the Conduct of Election Rules 1961 emphasises

the point that the election petitioner who is a defeated candidate, has ample opportunity to examine the voting papers before they are counted and in case the objections raised by him or his election agent have been improperly over-ruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that S.83 (1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

..... It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is valid. No hard and fast rule can be laid down in this matter, for, attempt to lay down such a rule would be inexpedient and unreasonable.

.... Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which S.83(1)(a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting."

45. Following the aforesaid judgement, the Supreme Court in the case of JITENDRA BAHADUR SINGH vs. KRISHNA BEHARI AND OTHERS reported in AIR 1970 SC 276 held as follows:—

".... as to the rejection of the votes polled in favour of the unsuccessful candidate, under the rule before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore it is quite easy for them to note down the serial number of the concerned ballot papers. Therefore if the election petitioner is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are

and what are the serial numbers of the ballot papers to which each one of them advanced their objections; the material facts required to be stated, are not satisfied and hence scrutiny of ballot papers should not be ordered."

46. In Smt. SUMITRA DEVI vs. SHRI SHEO SHANKER PRASAD YADAV AND OTHERS reported in AIR 1973 SC 215, the Supreme Court held that:—

"Where the allegations in the election petition are vague and the petition does not contain an adequate statement of the material facts and the evidence adduced by the petitioner is found unreliable and no definite particulars are also given in the application as to the illegalities alleged to have been committed in the counting of the ballot papers, the application for inspection of ballot papers cannot be allowed. A recount will not be granted as a matter of right but only on the basis of evidence of good grounds for believing that there has been a mistake in the counting. It has to be decided in each case whether a prima facie ground has been made out for ordering an inspection."

47. Supreme Court in the case of BHIRAM BHALAIK vs. JAI BEHARI LAL KHACHI AND ANOTHER reported in AIR 1975 SC 283 held:—

"Since an order for recount touches upon the secrecy of the ballot, it should not be made lightly or as a matter of course. The court would be justified in ordering a recount or permitting inspection of the ballot papers only where all the material facts on which the allegations or irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and the court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties. Mere allegations that the petitioners suspects or believes that there has been improper reception, refusal or rejection of votes or there have been irregularities in the counting of ballot papers will not be sufficient to support an order of recount and inspection."

48. In CHANDA SINGH vs. CH. SHIVRAM VARMA AND OTHERS reported in AIR 1975 SC 403 it was held as follows:—

"Rule 63 of the Conduct of Elections Rules 1961 obligates the candidate to state 'the grounds on which he demands such recount'. It is plain that a mere doubt or small lead or unspecified blemish in the manner of the counting falls short of the needs of the said rule. Under the rule the demand for recount may be rejected if it appears to the Returning Officer to be frivolous or unreasonable. What is not

reasonable grounded or seriously supported is unreasonable or frivolous. Suspicions of possible mischief in the process of likely errors in counting always linger in the mind of the defeated candidate when he is shocked by an unexpected Result. The Returning Officer has to be careful, objective and sensitive in assessing the legitimacy of the plea for rerunning the course of counting. Victory by a very few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The best surmise, if it be nothing more than surmise, cannot and should not induce the judge to break open ballot boxes. If the lead is relatively little and/or other legal infirmities or factual flaws hover around. Recount is proper, not otherwise. In short, where the difference is microscopic, the stage is set for a recount given some plus point of clear suspicion or legal lacuna militating against the regularity, accuracy, impartiality or objectivity bearing on the original counting. Of course, even if the difference be more than microscopic, if there is a serious flaw or travesty of the rules or gross interference, a liberal repeat or recount exercise, to check on possible mistake is a fair exercise of power. To tarnish the counting staff with bias is easy for any party who divorces means from ends. When the challenger belongs to the party in power a heavy strain is thrown on the strength of the moral fibre of the election staff whose fearless integrity is a guarantee of purity of the whole process but whose fortunes, before and after elections, may be cast with a political government whose key men may sometimes take disturbingly keen interest in the outcomes of elections and election petitions. The court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates although what is more important is the survival of the very democratic institutions on which our way of life depends."

49. In the case of *SHRI SATYANARAIN DUDHANI vs. UDAY KUMAR SINGH AND OTHERS* reported in AIR 1993 SC 367 it was held by the Supreme Court that :—

"The secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered".

In the facts of that case, it was held :—

"..... only three line objection application was filed before the Returning Officer. No objection whatsoever was raised during the counting and no irregularity or illegality was brought to the notice of the Returning Officer. Even, the material in the election petition, has been pleaded with the object of having a fishing enquiry and it did not inspire confidence. A cryptic application claiming recount made by the contestant before the Returning Officer. No details or any kind was moved by the petitioner. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the Returning Officer."

Therefore, it was held there was no contemporaneous evidence to show any irregularity or illegality in the counting and, therefore, the order of recounting was rejected.

50. After reviewing the entire case law, the Supreme Court in the case of *V.S. ACHUTHANANDAN vs. P.J. FRANCIS AND ANOTHER* reported in (2001) 3 SCC 51 has restated the principles as under :—

"1. The secrecy of the ballot is sacrosanct and shall not be permitted to be violated lightly and merely for asking or on vague and indefinite allegations or averments of general nature. At the same time purity of election process has to be preserved and therefore inspection and recount shall be permitted but only on a case being properly made out in that regard.

2. A petitioner seeking inspection and re-count of ballot-papers must contain averments which are adequate, clear and specific making out a case of improper acceptance or rejection of votes or non-compliance with statutory provisions in counting. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted would not serve the purpose.

3. The scheme of the rules prescribed in Part V of the Conduct of Elections Rules, 1961 emphasises the point that the election petitioner who is a defeated candidate has ample opportunity to examine the voting papers before they are counted, and in case of the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that Section 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

4. The election petitioner must produce trustworthy material in support of the allegations made for a re-count enabling the court to record a satisfaction of a *prima facie* case having been made out for grant of the prayer. The court must come to the conclusion that it was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute.

5. The power to direct inspection and re-count shall not be exercised by the court to show indulgence to a petitioner who was indulging in a roving enquiry with a view of fish out material for declaring the election to be void.

6. By mere production of the sealed boxes of ballot papers or the documents forming part of record of the election proceedings before the court the ballot papers do not become a part of the court record and they are not liable to be inspected unless the court is satisfied in accordance with the principles stated here inabove to direct the inspection and re-count.

7. In the peculiar facts of a given case the court may exercise its power to permit a sample inspection to lend further assurance to the *prima facie* satisfaction of the Court regarding the truth of the allegations made in support of a prayer for re-count and not for the purpose of fishing out materials."

51. The Supreme Court in the case of *Km. Shradha Devi vs. Krishna Chandra Pant And Others* Reported in AIR 1982 SC 1569 has held as follows:—

"In an election petition for relief of scrutiny and re-count on the allegation of miscount, it is not the requirement of law that in respect of each ballot paper rejected as invalid a specific averment must be so made as to identify the ballot paper and only those that can be correlated to the allegations in the petition specifically and not generally shall be re-counted.

When a petition is for relief of scrutiny and re-count on the allegation of miscount, the petitioner has to offer *prima facie* proof of errors in counting and if errors in counting are *prima facie* established a re-count can be ordered. If the allegation is of improper rejection of valid votes which is covered by the broad spectrum of scrutiny and re-count because of miscount, petitioner must furnish *prima facie* proof of such error. If proof is furnished of some errors in respect of some ballot papers, scrutiny and re-count cannot be limited to those ballot papers only. If the recount is limited to those ballot papers in respect of which there is a specific allegation of error and the correlation is established, the approach would work havoc in a parliamentary constituency

where more often 10,000 or more votes are being rejected as invalid. Law does not require that while giving proof of *prima facie* error in counting each head of error must be tested by only sample examination of some of the ballot papers which answer the error and then take into consideration only those ballot papers and not others. This is not the area of inquiry in a petition for relief of recount of the ground of miscount."

52. Therefore, the law on the point is well settled. In a petition seeking for recounting on the ground of improper counting in the election petition, the petitioner is expected to give concise statement of the material particulars of the ballots which have been wrongly rejected or improperly received in favour of the return candidate. The candidate and his election agents would have full opportunity to witness the counting by the Returning Officer. If at the time of counting when a ballot paper is wrongly rejected they have a right to object to the same. They have right to have inspection of the same and they are entitled to make a note of the number of ballot papers received, rejected and other particulars. If an election petition is to be founded on those grounds it necessarily follows that the minimum requirement expected of the petitioner is to mention these particulars in the Election Petition. It is thereafter he has to substantiate those allegations by evidence. It is after scrutiny of the pleadings and the evidence adduced, if the court is *prima facie* satisfied that there is some irregularity in counting, it can be said a case for recounting is made. On the contrary if the election petition is silent about these particulars, allegations are very vague and too general let alone leading evidence to support such vague allegations, the petition itself would not be maintainable. Merely because the difference in the votes polled by the two candidates is meager it is no ground for ordering recounting or supporting any presumption that there is a possibility of a miscount. In the background of this legal position let me consider the issues arising in this petition.

53. Re. Issue No. (1) :— The specific case pleaded by the petitioner as could be gathered from the pleadings and as contained in paragraph 9 and 10 of the petition discloses the following allegations.

54. The petitioner and his election agent was very much present at the counting venue at the time specified for counting. The postal ballot papers had to be taken first for counting. The candidate and his election agent were supervising the seating arrangements of their agents in the assembly segments. The R.O. without announcing that the actual counting of postal ballots papers commenced the counting of postal ballot. There were 1017 ballot papers and 653 ballot papers were rejected without assigning proper reasons. The rejection of postal ballot papers were improper and wrongful. If these votes are properly accepted and taken into account it would come to the petitioner and

votes that had come to the petitioner are wrongfully rejected. The R.O. has not assigned the reasons as required under Rule 54-A of the conduct of the Rules. Out of 364 votes taken into consideration for counting under postal ballots 128 votes have been polled in favour of the petitioner, i.e., 35%. If the 4th respondent had opened the postal ballots in accordance with rule 54-A of the Rules, the petitioner would have secured at least 40%, i.e., about 260 votes from out of the rejected votes. Rejecting of 653 votes, non counting of the said votes has resulted in materially affecting the result of the Raichur Constituency.

55. To understand this plea, we have to look to the evidence of P.W-1. In the affidavit filed by way of examination in chief, the very words found in the election petition have been repeated. There are no additions or omissions. In the cross examination, he has stated that : "On 13-03-2004, the counting of votes commenced at 8.00 a.m. Myself, election agent and counting agents were all present within the counting hall before the commencement of the counting. The total number of postal ballots received was 1017. It is not correct to suggest that these postal ballots were counted first. It is not correct to suggest that myself, my counting agent, election agent were all present at that time when postal ballots were counted. It is true that out of 1017 postal ballots 653 ballots were rejected. It is not correct to suggest that myself, my election agent, counting agents and BJP candidate were present when these 653 ballot papers were rejected. I do not know whether the counting supervisor and counting assistant assisted the Returning Officer in counting of votes. It is true to suggest that 653 postal ballot papers were invalid and they were rejected giving valid reasons. If I am shown the ballot papers I will be able to say which is valid and which is not valid, without seeing the same I am unable to say which is valid and not valid. I am not aware of the contents of Form-13A, 13B, and 13C in respect of postal ballot papers. I am not aware of the requirements of a postal ballot. It is false to suggest that 653 ballot papers were rejected because they did not comply the legal requirements."

56. Therefore, from the aforesaid evidence of the petitioner it is clear that this grievance was that the postal ballot papers have to be counted first at the commencement of the counting. Even though he was present at 8.00 a.m. He was not informed about the said counting, consequently, neither he nor the election agent were present and in their absence 653 postal ballots have been wrongfully rejected. He is not able to say whether the reason given for rejection is valid or not and after looking into the same, he will be able to say whether they are rightly or wrongly rejected. This evidence is consistent with the plea which he has taken in the petition. But taking advantage of the answers given by the R.O. who was examined as P.W. 2, in cross-examination where he has stated in examination in chief that : "The postal ballots had to be counted by the R.O. At the start of

the counting. The candidate and their election agents are permitted to be present throughout the counting before the R.O. The postal ballots are counted by the R.O. On one table. Simultaneously, each ARO starts counting other ballots. I have taken up the counting of postal ballot papers first and simultaneously AROs also started counting other votes. The postal ballot papers are counted and they are recorded also in accordance with law. In the cross-examination he has stated that : "The counting of postal ballot and other ballots were well planned and I was duly assisted by other officials. It is true that the venue of counting and the time at which the counting begins was duly informed to all the candidates, the election agents and counting agents. At the commencement of the counting I took up the counting of the postal ballots of Raichur Constituency. Similarly, each of the R.O. of each assembly constituency also took up counting of the postal ballots received in respect of each assembly constituency. Before commencement of the counting in the public address system announcements was made to the effect counting begins. All the candidates, their election agents and counting agents were present at the commencement of the counting. The postal ballots were counted by me at the commencement of counting. Similarly, AROs counted the postal ballot papers pertaining to their respective assembly constituency. Simultaneously, counting supervisor started counting the other votes in their respective tables. The total number of postal ballots received for No. 3 Raichur Parliamentary Constituency is 1017. I have counted all the covers containing the ballot papers. Out of 1017 postal ballot covers received 364 postal ballots were found valid. The conclusion reached to reject the postal ballot papers is based on the facts which I noticed in the declaration form. The rejection of ballot papers may be on the ground that the declaration is not complete or after the postal ballot is seen if it contains the signature of the voter or if he has voted for more than one candidate or if there is no vote. When the aforesaid infirmities are noticed I have no discretion except to reject the ballot as invalid. In all the rejected ballots I have given reason thereafter I have duly signed it and then rejected it. Neither the petitioner nor his election agent either immediately after the counting of postal ballots or thereafter at any time pointed out any infirmity, or illegality or mistake in rejecting the postal ballots. When the petitioner made a request for recounting of votes he has not complained that on account of wrong rejection of postal ballot recounting is to be ordered.

57. Therefore, relying on the evidence of these witness where he has stated that simultaneously the Counting Supervisor started counting the said votes in the respective tables it is contended that postal ballots and other ballots were simultaneously counted which is contrary to the code contained in Rule 54-A. Therefore, it is submitted that the petitioner has made out a case for

recounting if not for setting aside the election of the returned candidate on that ground.

58. Law mandates that the postal ballots shall be counted first. Law also mandates that the candidates and their agents should be duly informed the place of the counting and the time of the counting. The grievance is that the petitioner was not informed of the time of the counting. Postal ballots were not counted first and, therefore, petitioner and his agents had no occasion or opportunity to be present at the commencement of the counting of postal ballot papers. Now we have the evidence of the Returning Officer, two Assistant Returning Officers, the parties and the election agent of the first respondent. It is also to be borne in mind that the petitioner is not a stranger to the election. So far he has contested five times. Three times he has been successful, twice including the present election he has lost. It is an admitted fact that he was present at the place of counting with his election agent at 8 a.m. because he knew counting would start at 8 a.m. on 13-5-2004. His grievance appears to be R.O. did not declare the counting will start at 8 a.m. and he will take up the postal ballots first. Except the self serving statement of the petitioner, there is no evidence to substantiate the plea. On the contrary we have the evidence of the witnesses examined before this Court who have categorically stated voting commenced at 8 a.m. R.O. commenced the counting of postal ballots at 8 a.m. and the candidates including the petitioner, their election agents were present at the time of counting. In the light of this legal evidence, the plea and the evidence of the petitioner contrary to the same is difficult to accept in the light of the proved facts.

59. Probably after releasing the futility of this plea an attempt was made by the learned counsel for the petitioner taking advantage of an answer given by the PW2, RO to the effect that the counting of other votes also commenced simultaneously with that of counting of postal ballots by him, an argument was constructed that, when the law declares that the counting of postal ballots shall be done first it implies that till postal ballots are counted, other votes should not be counted. In the light of the categorical admission by the R.O. that the postal ballots and other votes were counted simultaneously counting is contrary to law illegal and, therefore, it is vitiated and the petitioner is entitled to recounting.

60. The said argument proceeds on the assumption that in law there is a prohibition for counting of other votes simultaneously with that of the postal ballots. The question is, is there any such prohibition. All that Rule 54A states is RO shall first deal with the postal ballot papers in the manner hereinafter provided. All that the Rule mandates is the postal ballots shall be counted first. The reason is not far to seek. It is contained in sub-rule (2) of Rule 54A. Sub-rule (2) provides that, no cover in

Form 13-C received by the RO after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. In other words postal ballot papers continue to come even after the polling date. It is possible that postal ballots may reach the RO on the counting day after the commencement of the counting. Whereas other votes are concerned after the polling is over there is no question of addition of any votes. It is in that context the Parliament wanted to make its intension clear by saying, after the counting is commenced if any ballot papers are to be received that shall not be taken into consideration. They shall be kept separately and they shall even not be opened and they shall be treated as rejected votes. It is in that context a dead line has to be fixed so far as postal ballot papers are concerned. Therefore the Rule says postal ballots shall be counted first, thereby meaning that postal ballots received after the counting shall be rejected. It can be further stated that other votes shall not be counted before the commencement of counting of postal ballots but it does not follow that other votes are to be counted only after the counting of postal ballot papers. In fact relying on sub-rule 11 of Rule 54A it was contended the R.O after counting of all valid votes given by the postal ballot in favour of each candidate has to record the total thereof in the result sheet in Form 20 and announce the same and only thereafter the other votes could be taken for consideration. The process of counting clearly set down in the rules do not indicate any such intention on the part of the Parliament. On the contrary Rules 55 clearly says that the RO may have the ballot box or boxes used at more than one polling station opened and the ballot papers found in such box or boxes counted simultaneously. If the counting is being conducted in more than one place the place where the RO is placed is treated as the last place where the ballot papers are counted. Therefore, a reading of these provisions in the context in which it is used keeping in mind the object with which these Rules are framed, makes it abundantly clear in law there is no prohibition for counting of postal ballots and other votes simultaneously. The requirement of law is postal ballots counting shall be taken first, i.e. at the commencement of counting, so that postal ballots received after counting is not taken into consideration.

61. As stated earlier, this is not the grievance made out by the petitioner in the Election Petition. It is an argument put forth on the basis of the answer which they have obtained in the cross examination of the RO. As there should be a specific plea, then evidence supporting the same, then only the Court can say whether a particular case is made out or not. Any amount of evidence without a plea is not of any assistance to the petitioner and the Court cannot by just looking into one sentence here and there, in the absence of a specific plea as required under Section 83 of the Act can come to the conclusion that a particular fact is proved though not pleaded.

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62. Secondly, from the evidence and the pleadings it is clear petitioner was not present when the postal ballots were counted. Therefore, he is completely ignorant about the role of the R.O. while counting of these votes. In fact he has gone to the extent of saying unless those ballot papers are shown to him, he is unable to say whether they are rightly rejected or not. Therefore, his contention and the pleadings that the R.O. has rejected 653 ballots papers without assigning proper reason, if those votes are properly accepted and taken into account if would come to the petitioner and votes that had come to the petitioner are wrongfully rejected and petitioner would have secured 40%, i.e., 260 votes from out of the rejected votes, is a mere ipsy dipsy of the petitioner. Absolutely it has no basis. On such vague allegations an order for recounting cannot be made as is clear from the law declared by the Supreme Court in the aforesaid cases. Therefore, I do not find any substance in the contention of the petitioner and issue No. 1 is held against the petitioner.

63. **Re. Issue No. 2:**— In so far as issue No. 2 is concerned the plea is specific. The grievance of the petitioner is as is clear from Ex. P16, Part II of Form 17C pertaining to Polling Station 71, 117 votes are allotted in his favour whereas while transferring the said votes to Form 20, the election sheet, only 15 votes are mentioned and, therefore, he has lost 102 votes. The very exhibit shows as against petitioner's 117 votes, the first respondent has secured 242 votes but while transferring those votes to Form 20 what is mentioned is only 147 and thus the first respondent also has lost 97 votes. Therefore, the difference would be only 5 votes. The difference in the margin between the petitioner and the first respondent is 508 votes and, therefore, these 5 votes would not materially affect the election and the returned candidate.

64. In this connection, it is relevant to notice that for the first time through out the country electronic voting machines were used for the purpose of voting. Accordingly, the Act was also amended by introducing Section 66A. Section 56C deals with counting votes. It provides, after the R.O. is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked "Result" provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit. As the votes polled by each candidate are displayed on the control unit, the R.O. shall have,—

- (a) the number of such votes recorded separately in respect of each candidate in Part II of Form 17C;
- (b) Part II of Form 17C completed in other respects and signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and

- (c) Corresponding entries made in a result sheet in Form 20 and the particulars so entered in the result sheet announced.

Therefore, at the counting place, on the counting day after the seal put to the electronic voting machines (hereinafter for short called as the "EVM") is opened, the R.O. is expected to press the button marked "result". Then first the total votes polled is displayed. The R.O. shall take the said number, enter in Part II of 17C. Thereafter, the votes polled by each candidate is displayed. The said votes are also recorded in Part II of Form 17C as against the name of each candidates. It is thereafter the said forms are duly signed by the R.O., agents and the candidates and then from the said form the figures are transferred to the result sheet, Form 20. As is clear from Ex. P17 there is a mistake. Same number of votes are shown for both Polling Station No. 71 as well as to 77. Thereby there is a clerical error. Here if this clerical error is viewed properly the number of votes petitioner has lost in the bargain is only five and that does not materially affect the result. On that ground it is not possible to set aside the election for ordering of recount. In fact the learned counsel for the first respondent pointed out one such mistake also has happened in Polling Station No. 101. There because of such a mistake 20 extra votes have been casted in favour of the petitioner and if that is taken into consideration, the margin of votes with which the first respondent would win the election would go up by 20 votes. These mistakes have not materially affected the result of the returned candidate. Notwithstanding these clerical errors, a case for setting aside the election and ordering for recount on this count is not made out. Hence, issued No. 2 is held against the petitioner.

65. **Re. Issue No. 3:**— In so far as issued No. 3 is concerned, the entire case of the petitioner is based on the fact that there is a difference in the figures mentioned in between the voters' turn out report and Form No. 20. In the petition, in the evidence filed in examination in chief by way of affidavits, the petitioner has clearly set out the Polling Station number, the name of the Polling Station, voters turn out as per the voters turn out report, showing the men, women total, votes allocated in Form 17C and votes allocated in Form 20 and contends that there is a difference of 389 votes between the figures mentioned in the voters turn out report and Form 17C and Form 20. The undisputed evidence which is on record as well as the statutory provisions show that on the polling day when a voter visits the respective polling stations where his name finds in the voters list, the officials should enquire his name, father's name, address. If they tally with the entry made in the marked electrol roll they will round of the serial number where his name is found. Thereafter, voter's signature is taken in the register of voters. After that voter is permitted to exercise his vote. After the time stipulated is over or after the voters who have entered the booth have cast their votes, the Presiding Officer would prepare the

voters' turn out report: The said report is prepared on the basis of the entries found in the marked electoral roll and the register of votes maintained at each polling station. The said statement indicates the gender wise record of voters who turn out to Cast the votes. After the last voter records the voting the Presiding Officer closes the voting machine by pressing the button "closed". After the button "closed", the machine displays the number of votes recorded. It does not show gender wise, candidate wise recording of votes. The R.O. fills in Form 17 Part I the number of votes so recorded in the voting machine.

66. It is also on record after a voter enters a polling station after he identifies himself and after the officials round off the serial number in the voters list he may decline to cast his vote. It is also possible after he puts his signature in the register maintained and he is permitted to vote he may decline to vote. If after putting such signature he declares that he intends to vote in favour of a particular candidate the Rules provide for the officials preventing him from casting the vote. As the elections this time was conducted for parliamentary constituency as well as for the assembly, a voter may choose to vote in the assembly and may not choose to vote for the parliamentary and vice versa. But, it is only when he casts the vote by pressing the button, it can be said he has casted the vote and that is the vote which has to be taken into consideration. In fact there is column prescribed in Form I of Part 17C where the officials are expected to make a mention of those factors who after identifying did not cast their votes. All this clearly demonstrates that all the persons who enter the polling station do not necessarily vote in the election. There is bound to be discrepancies between the persons who enter the polling station and the persons who actually vote. In fact under the Act and the Rules there is no statutory recognition for the entries the officials make in the voters turn out report, voters register. All that the hand book for returning officer instructs the R.O. to do is after putting a tick mark against the name of the person, who is identified himself, they are also expected to mention therein the sex of the person voted so that in the end of the day for statistics purpose they would come to know how many have entered the polling station for voting and out of them how many are men and women. The said information has to be sent to the Election Commissioner for the purpose of statistics. These figures have nothing to do with the number of votes cast to be counted on the counting day. Unless a voter presses the button in the EVM he has not casted his vote and in the end of the day after the polling is over by pressing the button "closed", the EVM displays the total number of votes polled in that polling station and that figure is reflected in Part I of Form 17C along with the particulars such as number of voters who after entering the polling station did not cast their votes. If there is a discrepancy they are expected to make a note in the prescribed column and then Part I of 17C and the voting machine is sent for

safe custody. On the counting day after the seal is opened again the button "start" is pressed, then the number of votes recorded are displayed. That figure is taken into Part II of Form 17C and thereafter the votes polled by each candidate is displayed which is also entered in Part II of 17C. From there entries are made in the result sheet. Admittedly, in the instant case barring one polling station there is absolutely no difference between the votes recorded on the counting day in Part II of 17C in Form 20. The petitioner's grievance is not in respect of difference in votes contained in Part I of Form 17C and Part II of 17C. The grievance only is difference between the votes entered in the voters turn out report and in form 20. As the voters turn out report has no legal standing in the entire scheme of things and it only reflects the number of people went to voting, merely because there is a difference in the said statistics prepared by the Election Commissioner for the purpose of statistics, it cannot be said that there is any illegality committed in counting of votes.

67. The material on record discloses when the petitioner sought for recounting immediately after the R.O. declared the number of votes secured by each candidate he filed an application for recounting. All that has been said in the application for recounting is there is a variation of votes during counting and there is a meager margin of votes, meager difference between him and the Congress candidate so he requested for recounting. He wanted recounting of assembly constituency wise so that the correct counting of votes could be traced. Annexure-P came to be issued by R.O. rejecting the said request and stating that when the figures are compared between the 8 assembly segments and the entry in Form No. 20 they did not find any mistake, the figures mentioned are correct. Merely because the margin of difference between the successful candidate and the loser is small that cannot be a ground for recounting. Even though the candidates, their agents had full opportunity to object to the figures no one has raised any objection at the time of counting and making entries in the prescribed form. Even while counting postal ballots when such an opportunity was given and when counting was done in the presence of the candidates no such objections are raised. Therefore, the request of the petitioner for recounting was rejected. A reading of the complaint of the petitioner makes it clear his grievance was there was a variation during counting. Now, the case sought to be made is not variation during the counting, the variation between the figures found in the voters turn out report which was prepared on the polling date and Form 20 and 17C which were entered on the date of counting. The petitioner when he made the objections had never in his mind the plea which he has now raised in the Election Petition. The other reason given was the margin is meager. It is settled law that meager margin is not a ground for recounting. If there is a microscopic difference coupled with prima facie evidence of illegality in counting then that

may justify an order for recounting. Here the difference between the votes is 508. Absolutely no illegality is pointed out during counting. Allegations made in respect of counting of postal ballots are found to be without any basis and in fact before the Court by consent of parties certified copies of Form No. 17C is marked, Form 20 is marked. Even the voters turn out report is marked. A perusal of the undisputed documents coupled with the evidence of the witnesses clearly establishes that there was absolutely no illegality in the counting of votes. Barring two clerical mistakes which is crept in, one shows that the petitioner should have got five more votes, another shows the petitioner got twenty extra votes to which he is not entitled, nothing else is pointed out. Therefore the issue No. 3 is also held against the petitioner.

68. **Reg. Issue No. 4:**— Section 82 of the Act mandates who shall be joined as parties in an election petition. It states that:

“A petitioner shall join as respondent to his petition— (a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further declaration is claimed, all the returned candidates; and (b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

69. Therefore the statute specifically provides who should be the parties. If the candidate is not seeking a declaration that he should be declared as elected then, it is suffice if he makes the returned candidate a party to the election petition. But in the event he wants a declaration that he is to be declared as elected, then he should make all the candidates who contested the election as parties. When corruption is urged as a ground to set said the election, the candidate against whom the allegation of corruption are made ought to be made a party. Beyond this, no other person could be made parties.

70. Dealing with this provision, the Supreme Court in the case of *Jyothi Basu & others Vs. Debi Ghosal & others*, reported in AIR 1982 SC 983 has held that Section 81, 82 and 86(4) of the Act, deals with who may present an election petition, who should be joined as parties and who can be joined as parties. But there is no provision dealing with the question as to who may joined as respondent. Therefore, it is clear that the contest of election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of ‘proper parties’ enter the picture at all. Therefore, it was held that the concept of proper parties is and must remain alien to an election dispute under the Act. Only those may be joined

as respondents to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents. A person who is not a candidate cannot be joined as respondent to the election petition.

71. Following the aforesaid judgement, the Supreme Court in the case of **B. SUNDARA RAMI REDDY Vs. ELECTION COMMISSION OF INDIA AND OTHERS** reported in 1991(1) Suppl.SCC 624, has held that Section 82 of the Act specifies the person who are required to be joined as respondents to an election petition. Under this provision the returned candidate is a necessary party as a respondent and where relief for declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is therefore not a necessary party to an election petition.

72. Further they proceeded to hold that since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stands excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such person is a proper party, but the Representation of the People Act, 1951, does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code cannot be imported to the trial of election petition in view of the express provisions of Section 82 and 87 of the Act. The Act is a self contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party.

73. Therefore, it is clear that though Section 87 of the Act which deals with the procedure before the High Court to be followed in an election petition, such as subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits.

74. Therefore, the application of CPC is subject to the provision of the Act and Rules. Section 82 provides that who shall be the parties to the petition. The application of CPC in so far as joining of parties stand excluded. Therefore, the concept of necessary party, proper party in the context in which it is understood under the provisions of CPC cannot be imported into the election petition which is clearly governed by Section 82 of the Act. When Section

82 makes it very clear that in any election petition the fight is between the person who contested the election and none the less persons who are totally unconcerned, are alien and are to be excluded. Even though allegations of negligence and improper allocation of votes and not complying with Act, Rules, Orders and Notifications are made against officials who were involved in the polling or counting, in the absence of any law providing for those persons being made parties in an election petition and when the provisions of CPC in so far as addition of parties stands excluded by virtue of Section 82, the question of impleading the R.O. to the election petition would not arise. The Act is a self contained code which does not contemplate joinder of a person or party to the election petition either on the ground that he is a necessary party or proper party. Therefore, the contention that the election petition is not maintainable on the ground that the R.O. against whom allegations are made in the writ petition is not made a party is without any substance. Accordingly issue No. 4 is held against the 1st Respondent.

75. Under these circumstances, the court is of the view petitioner has failed to plead and establish a case of improper rejection of valid votes or improper allocation of votes as pleaded by him. The entire case is based on surmises and conjectures which are not supported by any material. It appears the meager margin of difference in votes has prompted the petitioner to seek for recounting and when that request was refused an attempt is made by filing of this Election Petition for the purpose of a roving enquiry to find out in the course of the trial whether any material would surface. Unfortunately, the petitioner has miserably failed in such an attempt. Therefore, the petition fails. Petition is accordingly dismissed. No costs.

Sd./illegible
Judge

[No. 82/KT-HP/(14/2004)/2005]

By Order,
TAPAS KUMAR, Secy.

नई दिल्ली, 13 जनवरी, 2006

आ.अ. 15.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग झारखंड सरकार के परामर्श से एतद्वारा

श्री ए.के. बसु, आई.ए.एस. के स्थान पर श्री देवशीष गुप्ता आई.ए.एस. (जे.एच. : 1978) को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए, झारखंड राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री देवशीष गुप्ता, झारखंड सरकार के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे।

3. श्री देवशीष गुप्ता, मुख्य निर्वाचन अधिकारी, झारखंड के पद पर कार्य करते हुए झारखंड सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा।

[सं. 154/जेएच/2005-का. प्रशासन]

आदेश से,

स्टेन्डहोप युहलुंग, अवर सचिव

New Delhi, the 13th January, 2006

O. N. 15.—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India in consultation with the Government of Jharkhand hereby nominates Shri Devashish Gupta, IAS (JH: 1978) as the Chief Electoral Officer for the State of Jharkhand with effect from the date he takes over charge and until further orders *vice* Shri A.K. Basu, IAS.

2. Shri Devashish Gupta shall cease to hold and hand over forthwith the charge of all or any charges of work under the Government of Jharkhand, which he may be holding before such assumption of office.

3. Shri Devashish Gupta while functioning as the Chief Electoral Officer, Jharkhand shall not hold any additional charge whatsoever under the Government of Jharkhand except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/JH/2005-P. Admn.]

By Order,

STANDHOPE YUHLUNG, Under Secy.

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